



UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

mk

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/330,763	06/11/99	TAGGART	T STEU-2666

005409
ARLEN L. OLSEN
SCHMEISER, OLSEN & WATTS
3 LEAR JET LANE
SUITE 201
LATHAM NY 12110

IM52/0522

EXAMINER

SIOUBRA, I

ART UNIT	PAPER NUMBER
----------	--------------

1744

DATE MAILED: 05/22/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/330,763

Applicant(s)

TAGGART, THOMAS D.

Examiner

Imad Soubra

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2001.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) _____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

- Determining the scope and contents of the prior art.
- Ascertaining the differences between the prior art and the claims at issue.
- Resolving the level of ordinary skill in the pertinent art.
- Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 1-38 are rejected under 35 U.S.C 103(a) as being obvious over Kelbrick et al in view of Muys et al. Kelbrick et al intrinsically discloses a similar devise to sterilize containers using multiple numbers of nozzle sprayed with hydrogen peroxide at different levels of concentration (see entire document). Kelbrick et al teaches that in Figures 1-3, the packaging machine 10 has an air flow system which introduces filtered aseptic air into the cabinet 11 and maintains a positive air pressure relative to atmospheric pressure in the aseptic

zone 30 of the machine 10; this positive pressure is provided principally by a blower 32 located in the top portion of the machine 10; the blower provides a flow of air into the three dual HEPA filter assemblies 35-37 spaced along the top of the machine 10; thus, the product filling and container sealing stations 21 and 25 are at a pressure P1, and the container sterilization station 17 is at a pressure P3; an internal portion of the lidstock feed assembly 38 is partitioned from the container sealing station 25 and provided with its own air supply from the HEPA filter assembly 37 directly above it, and the reference provides greater detail of the process that occurs on the machine (column 2, line 63-column 3, line 30). Kelbrick et al further teaches that all the valves 61, 65 and 66 closed, the conveyor 13 is engaged at a slow speed, and the introduction of hydrogen peroxide into the cabinet 11 is begun; in order to expose all surfaces of the conveyor 13 to hydrogen peroxide, the conveyor 13 moves at low speed throughout the sterilization procedure; an atomized spray of at least 33% aqueous hydrogen peroxide is introduced into the elbow 52 by means of the spray nozzle 71; as the valve 61 is closed, the hydrogen peroxide laden hot air in the manifold 57 proceeds through the plurality of nozzles 19 to introduce a fog of hydrogen peroxide into the container sterilizing station (column 4, line 66-column 5, line 17). Kelbrick et al also teaches that the concentration of hydrogen peroxide can be reduced to 0.5 ppm (column 6, lines 1-5). However, Hoshino fails to disclose that bottles can be sterilized using this method. On the other hand, Muys et al intrinsically discloses that bottles are sterilized by using a similar method as taught by Kelbrick et al. Further, it would be obvious to modify

the invention so that the device can have four nozzles spraying the hydrogen peroxide gas at different rates where the concentrations differ in each nozzle. Clearly, the combination of these two references is similar to the claimed invention. Therefore, it would have been obvious of one having ordinary skill in the art at the time that the invention was made to modify the device in order to effectively sterilize the bottles.

Applicant's Arguments

2. Kelbrick et al fails to teach or suggest, inter alia, "...a plurality of zones within a sterilization tunnel having different sterilant concentration levels, " as recited in claim 1. Kelbrick et al fails to teach or suggest, inter alia,"...a plurality of sterilant concentration zones within the sterilization tunnel.

3. Kelbrick et al (col. 3, lines 26-29) discloses " the various pressure within the machining cabinet 11 preferably have the relationship to one another as $P_1 > P_2 > P_3 > P_A$, where P_A is the ambient atmospheric pressure; Kelbrick et al discloses various pressures and fails to teach or suggest a plurality of sterilant concentration zones.

4. Hoshino and Muys et al fail to teach or suggest that the container is bottle.

Response to Applicant's Arguments

2. The plurality sterilant concentration is taught in column 2, lines 30-42 in the patent of Kelbrick et al where the concentration of hydrogen peroxide is 33% followed by hot air where the concentration of the hydrogen peroxide will decrease as the hot air is mixed with the hydrogen peroxide concentration and thus causing different concentration of hydrogen peroxide being sprayed from the nozzle wherein this limitation reads on the independent claims that are stated by the applicant. The concentration of hydrogen peroxide would differ because the initial concentration of hydrogen peroxide would change from the nozzle to the container since it is diluted with air as time increases. Therefore, this limitation is inherently known in the art and the patent of Kelbrick explains how this method occurs in his invention.

3. The different pressure shows that the apparatus can release the gas at different flow rates in the patent of Kelbrick et al.

4. Bottles are taught throughout the patent of Muys et al. For instance, another teaching would be in column 3, lines 42-55.

Conclusion

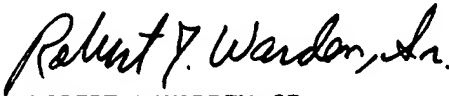
Any inquiry concerning this communication from the examiner should be directed to Imad Soubra whose telephone number is (703) 305-3541. The examiner can normally be reached on 8:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be

Application/Control Number: 09/330,763

Art Unit: 1744

reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3599 for regular communications and (703) 305-5408 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1193.

Imad Soubra
May 16, 2001


ROBERT J. WARDEN, SR.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700